84-1401 (1)

NO. _____

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IN THE SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM, 1985

MARTINA MAE CARPENTER

v.

CITY OF PASCO, WASHINGTON

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES ON APPEAL FROM THE SUPREME COURT FOR THE STATE OF WASHINGTON

Martina Mae Carpenter

Martina Mae Carpenter
Petitioner, Pro Se
P.O. Box 2904
Pasco, WA 99302

35 pp

QUESTIONS PRESENTED

1. Right to Counsel is guaranteed under the Sixth Amendment to the Constitution and must be exercised if the charges reflect incarceration as the ramification of conviction.

2. Jury Instruction No. 7 as given by the Court is in error in that it mis-states the law with respect to the definition of acting knowingly.

IN THE SUPREME COURT

OF THE UNITED STATES

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MARTINA MAE CARPENTER

v.

CITY OF PASCO, WASHINGTON

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES
ON APPEAL FROM THE SUPREME COURT FOR
THE STATE OF WASHINGTON

A writ of certiorari is respectfully sought to review the Court of Appeals Order affirming the conviction of the Petitioner in a criminal case on June 6, 1983.

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JURISDICTION

The Judgement of the Superior Court (Appendix A) was entered on June 6, 1983. It was affirmed on Appeal and Motion for Reconsideration was denied on July 5, 1983, (Appendix B). Petition for Review to the Supreme Court of the State of Washington was denied and filed November 16, 1984. Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

The constitutional provision at issue in the instant case is the Sixth Amendment which provides in pertinent part, as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defence."

STATEMENT OF THE CASE

Petitioner, Martina Mae Carpenter, a resident of Pasco, Washington, registered for a Constitutional Law course at Columbia Basin College located in Pasco, Franklin County, Washinton. Mrs. Carpenter tendered payment for the course in the form of a document known as a Public Office Money Certificate.

Following registration and the tendering of the Public Office Money Certificate, the Petitioner began attending classes.

Subsequently, she was notified by the President of the college, to either pay in currency usually used in the United States or else desist attending the course.

Ultimately, Mrs. Carpenter was physically removed from the premises by the Pasco City Police Department. She was charged with violation of the Pasco Municipal Code 9.52.020--Trespass.

Petitioner requested assigned counsel indicating to the trial court that she was unable to obtain counsel. She was supplied with the Pasco Court Motion and Affidavit for Assignment of Counsel. Petitioner declined to fill out the prerequisite document and instead provided a Motion to proceed Informa Pauperis as well as an Affidavit of the petitioner indicating inability to obtain counsel.

Petitioner reasserted the desire for court appointed counsel, the court denying counsel until Mrs. Carpenter completed the prerequisite document. At trial Mrs. Carpenter objected to the giving of Jury Instruction number seven.

Petitioner was sentenced, after a finding of guilty by the jury, to 180 days of incarceration, with 179 being suspended, a fine of $100.00 and an assessment of $370.00 for court costs.

REASONS FOR GRANTING THE WRIT

I

The Right to Counsel inherent in the Sixth Amendment to the Bill of Rights and the United States Constitution. The Petitioner filed an affidavit and supporting documents for the trial court, but they were denied. The reason given for denial was that the Petitioner declined to complete the questionaire supplied by the court for the purpose of establishing indigency, which is prerequisite to the appointment of counsel.

Instead, Petitioner filed her own affidavit (See Appendix A) as well as supporting documents for the trial court, but they were subsequently denied. Forced to proceed in Forma Pauperis immediately left Petitioner at a disadvantage from which she was unable to articulate within the parameters of accepted judicial procedures. At no time did Petitioner waive Right to Counsel and thus still retains it as a Right. Denial

of this Right was paramount to violation of the law.

The Rules for Courts of Limited Jurisdiction at Rule 2.11(d) states:

> (1 Unless waived, counsel shall be provided to any person who is financially unable to obtain one without causing substantial hardship to himself or his family. Counsel shall not be denied to any person merely because his friends or relatives have resources adequate to retain counsel or because he has posted or is capable of posting bond.

The trial court placed the Petitioner in the position of choosing between and subsequently surrendering either the Right to Counsel or the Right to Privacy. An individual cannot be forced to relenquish one right in order to retain the other.

United States v. Jackson, 390 U.S. 570, 20 L.Ed. 2d 138, 88 S.Ct. 1209, states:

> Whatever might be said of Congress' objectives, they cannot be pursued by means that needlessly chill the exercise of basic constitutional rights. Cf. United States v. Robel, 389 U.S. 258, 19 L.Ed. 2d 231, 237-238, 81 S.Ct. 247. The question is not whether

that effect is unnecessary and therefor excessive.

Congress cannot impose such a penalty in a manner that needlessly penalizes the assertion of a constitutional right. See Griffin v. California, 380 U.S. 609, 14 L.Ed.2d 106, 85 S.Ct. 1229.

And, in the case of Griffin v. California, supra, the court said:

For comment on the refusal to testify is a remnant of the "inquisitorial system of criminal justice," Murphy v. Waterfront Comm'm, 378 U.S. 52, 55, 12 L.Ed. 2d 678, 681, 84 S.Ct. 1594, which the Fifth Amendment outlaws. It is a penalty imposed by courts for excercising a constitutional privilege. It cuts down on the privilege by making its assertion costly.

Ex Rel. Brundage v. Eide, Wash, 521 P.2d 706:

The sixth amendment to the United States Constitution imposed upon the state the obligation of furnishing counsel to indigent criminal defendants at no cost to the defendant and applies to all cases whether misdemeanor or felony, where a defendant may be subjected to the loss of liberty if determined to be guilty of the particular charge against him. Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972). A person cannot be influenced to surrender a constitu-

tional right by imposing a penalty on its use. Griffin v. California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968).

In Morgan v. Rhay, 78 Wash. 2d 116, 470 P.2d 180, the Washington State Supreme Court said:

> It has become axiomatic that an idigent accused of crime is entitled upon request to have counsel appointed for him at any critical state of the proceedings against him, and that a denial of such right breaches his constitutional rights.

And:

> Although great weight will ordinarily be attached to the trial court's findings with respect to the question of indigency, yet, where basic constitutional rights are involved, we cannot blindly accept such findings. We are compelled to make our own determination from the record before us whether in fact there has been an invasion of a constitutional right.

The California State Supreme Court said in the case of March v. Municipal Court for San Francisco J.D., 498 P.2d 437:

> ...the Supreme Court has repeatedly reasserted the indigent defendant's

> right on appeal to a free transcript or adequate substitute, at state expense...and has extended that right to indigent misdemeanants as well as felons.

The court went on to say:

> If the affidavits present a prima facie showing of indigency, the motion must be granted unless the court has good reason to doubt the truthfulness of the allegations. If the court doubts the truthfulness of the allegations, it is then required to decide the matter on conflicting affidavits or, in the unusual case, to order a judicial hearing on the matter. It is imperative that these procedures be followed since they guarantee that a denial of an appellant's motion will not be based on allegations to which he has not had the opportunity to respond.

The Petitioner was sentenced to jail under the charges, which is a clear contradiction to the intent of law suggested in the holding in Scott v. Illinois, 440 U.S. 367, 59 L.Ed.2d 383, 99 S.Ct. 1158 which states:

> We therefore hold that the Sixth and Fourteenth Amendments to the United States Constitution require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed

counsel in his defense.

In Argersinger v. Hamlin, 407 U.S. 25, 32 L.Ed.2d 530, 92 S.Ct. 2006, the court said:

> We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offence, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.
>
> That is the view of the Supreme Court of Oregon with which we agree. It said in Stevenson v. Holgman, 254 Ore. 94, 102, 458 P.2d 414, 418:
>
> > We hold that no person may be deprived of his liberty who has been denied the assistance of counsel as guaranteed by the Sixth Amendment. This holding is applicable to all criminal prosecutions.

The Supreme Court of Arizona discussed at some length U.S. Supreme Court decisions on the right to counsel as they related to State v. Anderson, 392 P.2d 784:

> The (Supreme) Court expressly overruled Betts v. Brady and held that the Sixth Amendment's guarantee of counsel was one of those provisions of the Bill of Rights fundamental and essential to a fair trial, made

> obligatory on the states by the Fourteenth Amendment, and that an indigent defendant in a criminal prosecution in a state court has the right to have counsel appointed for him.
>
> The Court held that in a state capital case, where the defendant was unable to employ counsel, and was incapable adequately of making his own defense because of ignorance, feeblemindedness, illiteracy or the like, it was the duty of the court, whether requested or not, to assign counsel as a necessary requisite of due process of law;...

And the Arizona court said:

> ...there is no question in our minds but that the Sixth Amendment's guarantee of right to counsel is carried full sweep to the states by the due process clause of the Fourteenth Amendment.
>
> In view of the Patterson cases, we believe that Gideon requires state courts to appoint counsel for indigents accused of a misdemeanor which falls in the category of a "serious offense" and we so hold.

In Alexander v. City of Anchorage, 490 P.2d 910, defendant was arrested and charged with loitering. She requested the district court to appoint counsel, but it was denied. Superior court also denied her request. The Supreme Court of Alaska reversed and said:

> ...we hold that in any criminal prosecution,...the accused shall have the right to be represented by counsel. This means that he has the right to the assistance of counsel for his defense if he is prosecuted for a misdemeanor, as well as for a felony, when the penalty upon conviction of the misdemeanor may result in incarceration in a jail or penal institution, the loss of a valuable license, or a fine so heavy so as to indicate criminality.

And in the landmark case of Gideon v. Wainwright, 372 U.S. 335, 9 L.Ed.2d 799, 83 S.Ct. 792, 93 ALR 2d 733, the Supreme Court made it clear that every poor person charged with a crime is entitled to counsel:

> We but restore constitutional principles established to achieve a fair system of justice. Not only these precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Simi-

larly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries... From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

And in another important Supreme Court opinion, Powell v. Alabama, 287 U.S. 45, 68-69, 53 S.Ct. 55, 64, 77 L.Ed. 158, 170 (1932) the court best stated the defendant's need for counsel:

> The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar

with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he might have a perfect one. He requires the guiding hand for counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

And in Argersinger v. Hamlin, supra, the Supreme Court said:

The Sixth Amendment, which in enumerated situations has been made applicable to the States by reason of the Fourteenth Amendment provides specified standards for "all criminal prosecutions."

In Washington v. Texas, (388 U.S. 14, 18 L.Ed.2d 1019, 87 S.Ct. 1920) we said, "We have held that due process requires that the accused have the assistance of counsel for his defense,..."

The requirement of counsel may well be necessary for a fair trial even in a petty-offense prosecution. We are by no means convinced that legal and constitutional questions involved in a case that actually leads to imprisonment even for a brief period are any less complex than when a person

can be sent off for six months or more. See, e.g., Powell v. Texas, 392 U.S. 514, 20 L.Ed.2d 1254, 88 S.Ct. 2145; Thompson v. Louisville, 362 U.S. 199, 4 L.Ed.2d 654, 80 S.Ct. 624, 80 ALR 2d 1355; Shuttlesworth v. Birmingham, 382 U.S. 87, 15 L.Ed.2d 176, 86 S.Ct. 211.

Mr. Justice Powell, with whom Mr. Justice Rehnquist concurred in the result:

> It is clear that whenever the right-to-counsel line is to be drawn, it must be drawn so that an indigent has a right to appointed counsel in all cases in which there is a due process right to a jury trial. An unskilled layman may be able to defend himself in a nonjury trial before a judge experienced in piecing together unassembled facts, but before a jury the guiding hand of counsel is needed to marshal the evidence into a coherent whole consistent with the best case on behalf of the defendant. If there is no accompanying right to counsel, the right to trial by jury becomes meaningless. (Emphasis added.)
>
> ...few laymen can present adequately their own cases, much less identify and argue relevant legal questions. Many petty offenses will also present complex legal and factual issues that may not be fairly tried if the defendant is not assisted by counsel.
>
> ...When the deprivation of property rights and interests is of sufficient

> consequence, denying the assistance of counsel to indigents who are incapable of defending themselves is a denial of due process.

And, in Johnson v. Zerbst, 304 U.S. 458, 82 L.Ed. 1461, 58 S.Ct. 1019, the Supreme Court of the United States held:

> ...the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is presented by experienced and learned Counsel. That which is simple, orderly and necessary to the lawyer--to the untrained layman--may appear intricate, complex and mysterious.
>
> The purpose of the constitutional guaranty of a right to Counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights.

In light of the fact that Petitioner faced six months in jail, and was sentenced to 180 days, (179 suspended), it is obvious that denial of counsel is plain error and this doctrine is so well established as to need no further support. Dismissal of conviction stands on this issue alone. Clark v. Gladden, 432 P.2d

182 states:

> A denial of counsel at the trial is now recognized in state and federal courts as a constitutional defect that will render a conviction void,...

Throughout the entire proceeding, Defendant repeatedly requested counsel; at arraignment, January 26, 1983; at the pre-trial hearing, February 2, 1983; after pre-trial hearing, February 22, 1983 (in the form of a Motion for Continuance and Waiver of Speedy Trial Act); and finally, at trial, March 21, 1983.

With each opportunity, the judge forfeited his chance to correct his erroneous decisions. At trial, it is especially apparent that as each subsequent Motion was denied Petitioner was exposed to a higher degree of harm and injury due to the Court's abrogation of so fundamental a right as assistance of counsel.

REASONS FOR GRANTING THE WRIT

II

Instruction No. 7 which is attached as Appendix D was offered by the City of Pasco, and given over the objection of the Petitioner. That instruction as given by the court does not comply with State v. Shipp,, 93 Wn.2d 510, 610, P.2d 1322 (1980). Although the city indicated to the court that they were offering Washington Pattern Instructional Criminal 10.02, in reality the offer was former "WPIC" 10.02 and not the currently revised one, which reads as follows:

> "A person knows or acts knowingly or with knowledge when he or she is aware of a fact, facts, or circumstances or a result described by law as being a crime.
>
> If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge."

The defect, as determine by State v. Shipp,

supra, is in the last sentence of WPIC 10.02, indicating that the jury is permitted but not required to find that the Petitioner acted with knowledge. While knowledge may be satisfied if the jury could have found that the person acted with intent, knowledge in the case before the bench is an integral part of the city's case.

This aspect of knowledgable intent directly correlates to the question of willfulness to commit trespass. The burden of proof for the establishment of Willful Trespass as an element of the offense rests fully with the city.

Pasco Municipal Code 9.52.020 states:

> "Every person who shall go upon the land of another with the intent to vex or annoy the owner or occupant thereof, or to commit any unlawful act, or who shall willfully go or remain upon any land after having been warned by the owner or occupant thereof not to trespass thereon is guilty of a misdemeaner."

In State v. Batten, 20 Wash. App. 77, 578 P.2d 896 (1978), Division III of the Court of Appeals held that under the State Statute RCW

9A.52.080, a claim of right could be a defense to a charge of criminal trespass if the Appellant has reason to believe he had a right to enter and remain and that belief was based on reasonable grounds. It is Mrs. Carpentar's contention that with respect to property, such as Columbia Basin College, that a member of the public has a right to believe that they have a right of access. Furthermore, that it is a reasonable belief, and that the City must show Mrs. Carpentar lacked that reasonable belief before the City may prevail with respect to a criminal trespass conviction.

CONCLUSION

Petitioner prays that this Court will review the merits of this Writ and grant a rehearing of the facts at issue in the instant case.

Petitioner has been denied counsel, forced into a position of compromising a constitutional guarantee in order to preserve another, and

charged criminally under a misdemeaner statute.

In good faith and firm conviction, Petitioner asks that this high Court receive and hear the above Writ.

APPENDIX A

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF FRANKLIN

CITY OF PASCO, WASHINGTON, Respondent,	)	No. 4646
vs.	)	
MARTINA MAE CARPENTER, Appellant.	)	MEMORANDUM DECISION

The Court affirms the lower court for the following reasons:

1) Ordinances with the same or similar language which is the basis for this charge have been held constitutional by the Supreme Court of this state.

2) It was a question of fact whether there was a trespass.

3) The courts have ruled, in effect, that if a defendant wants an attorney at public expense, he or she must show a financial hardship, and the manner used by the Pasco court is the same or similar as used throughout the state

and other states, and is not a violation of the defendant's right of privacy.

4) The individual responsible for maintaining or on public property has the authority to take legal steps to insure such order.

This Court therefore remands the case to the police court with the request that the judge reconsider the fine and jail sentence imposed.

DONE BY THE COURT this 6th day of June, 1983.

Albert J. Yencopal
Superior Court Judge

APPENDIX B

Superior Court
Benton-Franklin Judicial District
Albert J. Yencopal, Judge

July 5, 1983

Martina Mae Carpenter
Greg A. Rubstello

RE: State vs. Martina Mae Carpenter,
No. 4646

Gentlemen:

The motion for reconsideration has been denied. And, I have signed the order denying it and remand the matter to the Police Court on this fifth day of July, 1983.

Respectfully,

Albert J. Yencopal
Superior Court Judge

mas

APPENDIX C

THE SUPREME COURT
State of Washington
Olympia
98504-0511

November 16, 1984

Mr. J. Scott Timmons
Attorney at Law
P.O. Box 5791
Kennewick, Washington 99336

Mr. Greg Rubstello
Attorney at Law
412 West Clark Street
Pasco, Washington 99301

Re: Supreme Court No. 50937-9-City of Pasco v. Martina Mae Carpentar, Court of Appeals No. 6001-2-III

Counsel:

The above entitled petition for review was considered by the Court on its November 16, 1984, petition for review calendar.

The petition was denied by order number 131/18 filed on November 16, 1984.

Very truly yours,

REGINALD N. SHRIVER
Supreme Court Clerk

RNS:tt

APPENDIX D

INSTRUCTION NO. 7

A person knows or acts knowingly or with knowledge when:

(1) He or she is aware of a fact, facts or circumstances or result described by law as being a crime; or

(2) He or she has information which would lead a reasonable person in the situation to believe that facts exist which facts are described by law as being a crime.

A person acts wilfully when he or she acts knowingly.